

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**R.S.A NO. 4329 OF 2013 (O & M)
DECIDED ON : 13.03.02015**

Jagtar Singh

...Appellant

versus

Paramjeet Kaur and others

...Respondents

CORAM : HON'BLE MR. JUSTICE K.C.PURI

Present : Mr. Pankaj Bali, Advocate.

K. C. PURI, J. (ORAL)

CM NO. 11693-C OF 2013

There is delay of 23 days in refiling the appeal. The same stands condoned for the reasons mentioned therein.

C.M NO. 11694-C OF 2013

The application stands allowed and the legal heirs of deceased Nachhattar Singh-respondent No.1, as mentioned in para no.2 of the application, are ordered to be impleaded as party-respondents. Necessary correction be made in the memo of parties.

MAIN CASE

Challenge in this regular second appeal is to the judgment dated 12.12.2012 passed by Mr. Kamaljit Lamba,

Additional District Judge, Ludhiana, vide which the appeal preferred by the appellant/plaintiff against the judgment and decree dated 06.12.2010 passed by Shri Balwinder Kumar Sharma, Additional Civil Judge (Senior Division), Khanna, was dismissed.

Brief resume of the case is that the plaintiff, defendant No.2 constituted a Joint Hindu Family of which defendant No.1 is Karta. The suit land as described in the head note of plaint is Joint Hindu Family and ancestral coparcenary property. So the same cannot be alienated without any benefit of Joint Family. The property in dispute was inherited by defendant No.1 from his father Arjan Singh through survivorship. Mutation No. 969 was sanctioned in favour of Mohinder Singh and others. The property situated at village Kot Sekhon, after the death of Arjan Singh, was inherited by Nachhattar Singh and others. Nachhattar Singh exchanged his share of property in dispute with Balbir Singh and Naranjan Singh vide Mutation No. 1229. The land is Joint Hindu Family and ancestral coparcenary property as the land given in exchange was also Joint Hindu Family and ancestral coparcenary property. The plaintiff being coparcener has right over the property in dispute. It is further alleged that defendant No.2 with mala fide intention obtained power of attorney from defendant No.1 on 01.04.2003 and executed sale deed in favour of defendant No.4 and 5 regarding the land measuring 02 kanals 0 Marlas on 28.04.2003 without any legal necessity. He further

executed sale deed dated 30.04.2003 regarding land measuring 6 kanals 19-½ marlas in favour of defendant No.3, who further mortgaged with possession land measuring 06 kanal 01 marla vide mortgage deed dated 09.06.2003 for ₹70,000/- without paying anything. The amount was mentioned to create false evidence. The sale deeds and mortgage deed and the mutation sanctioned on their basis are illegal, null, void and are liable to be set aside. The plaintiff requested the defendants to treat the aforesaid charge over the property in dispute to which they have no right.

The suit was contested by the defendants No.1 to 3 by filing joint written statement taking preliminary objections of maintainability of suit; improper value of the suit for the purpose of court fee and jurisdiction; cause of action and locus standi. It was further submitted that defendant No.1 was competent to alienate the property in dispute being its absolute owner. The other averments of the plaint were denied.

Defendants No.4 and 5 filed separate written statement claiming themselves to be bona fide purchasers for the consideration of land measuring 02 kanal 0 marla having purchased it vide sale deed dated 28.04.2003 signed by Avtar Singh defendant No.2 as attorney of Nachhattar Singh-defendant No.1, who was duly competent to alienate the property being self acquired property. The other averments were denied.

Defendant No.1 appeared in person on 22.07.2003 but later on he did not turn up.

Replication to both the written statements was filed. From the pleadings of parties, following issues were framed by the trial Court : -

- 1) Whether suit property is Joint Hindu Family and Ancestral Coparcenary Property of plaintiff and defendants No.1 and 2 ? OPP
- 2) Whether sale deeds dated 28.04.2003, 30.04.2003 and mortgage deed dated 09.06.2003 are illegal, null and void documents and are not binding upon the plaintiff ? OPP
- 3) Whether sale deeds dated 28.04.2003, 30.04.2003 and mortgage deed dated 09.06.2003 were for legal necessity ? OPD
- 4) Whether plaintiff is entitled to declaration as prayed for ? OPP
- 5) Whether plaintiff is entitled to permanent injunction as prayed for ? OPP
- 6) Whether suit is not properly valued for the purposes of court fee and jurisdiction ? OPD
- 7) Whether suit is not maintainable in the present form ? OPD
- 8) Relief.

In order to prove his case, plaintiff himself stepped into the witness box as PW-1 and further examined PW-2 Hari Singh, PW-3 Kuldeep Singh, PW-4 Bhag Singh and closed the evidence.

On the other hand, Harjinder Singh one of the defendants appeared as DW-1 and closed the evidence.

In rebuttal, the plaintiff tendered certain documents.

The learned trial Court, after appreciating the evidence, dismissed the suit of plaintiff with costs.

Feeling dissatisfied with the above said judgment and decree dated 06.12.2010 passed by Additional Civil Judge (Senior Division), Khanna, the plaintiff preferred first appeal. The learned Additional District Judge, Ludhiana, vide judgment dated 12.12.2012, dismissed the appeal.

Still feeling aggrieved with the judgment and decree dated 12.12.2012 passed by Additional District Judge, Ludhiana and the judgment and decree dated 06.12.2010 passed by Additional Civil Judge (Senior Division), Ludhiana, the plaintiff/appellant has preferred the present regular second appeal.

The appellant in para No.5 of the grounds of appeal has mentioned that following substantial questions of law have arisen in the present appeal :-

- 1) Whether the impugned judgments and decrees passed by the courts below are result of misreading of pleadings and evidence ?
- 2) Whether the Karta of Joint Hindu Family can alienate the ancestral coparcenary property of the Joint Hindu Family without any legal necessity or beyond his share ?
- 3) Whether the Karta of Joint Hindu Family executed a Will in favour of the male members of the family with a view to keep the ancestral coparcenary property of the Joint Hindu Family with male members only then the status of the property will remain coparcenary ancestral property ?

i have heard learned counsel for the appellant and have gone through the file carefully.

Learned counsel for the appellant has submitted that judgments of both the courts below are the result of misreading of the pleadings and evidence. The Karta of a Joint Hindu Family cannot alienate the ancestral coparcenary property without any legal necessity. It is further submitted that Karta of Joint Hindu Family has executed a Will in favour of male member of the family with a view to keep the ancestral property of the Joint Hindu Family within the male members and as such, the status of the property will remain ancestral coparcenary property.

The point in issue before both the courts below is whether the property is Joint Hindu Family Ancestral Coparcenary Property and both the courts below have returned a definite finding that plaintiff has failed to prove the fact that the land in dispute is a Joint Hindu Family Ancestral Coparcenary Property. Arjun Singh has executed Will dated 30.04.1984 in favour of his sons. The plaintiff is son of Nachhattar Singh who got the property of Arjun Singh by way of Will. It is settled law that any property received other than by way of inheritance cannot be treated as coparcenary property.

The argument advanced by learned counsel for the appellant to the effect that execution of Will by Arjun Singh does not change the character of the property as the dominant intention of the attestator was to keep the property within the male descendant, has not find favour by both the courts below.

Learned counsel for the appellant could not point out as to how the findings of both the courts below are the result of misreading of the pleadings and evidence. The learned courts below have rightly observed that normal presumption is that property is self acquired and the onus lies heavily upon the party who alleged that property is coparcenary property. The plaintiff/appellant has failed to discharge the said onus. Moreover, whether property is Joint Hindu Family Ancestral Coparcenary Property is a question of fact to which both the courts below have returned findings against the plaintiff/

appellant. However, there is no dispute to the preposition of law that Karta of a Joint Hindu Family can alienate the ancestral property only for legal necessity.

Learned counsel for the appellant has relied upon authority "***Rohit Chauhan vs Surinder Singh and others***" **2013 (9) SCC 419.**

So far as ***Rohit Chauhan's case (supra)*** is concerned, the facts of said case are distinguishable from the facts of present case as in that case the property was gifted to the brother which was found to be without consideration.

So, in view of the above discussion, all the questions of law raised by the appellant stands answered against the appellant to the extent mentioned above. Consequently, the appeal is without any merit and the same stands dismissed.

MARCH 13, 2015
shalini

(K. C. PURI)
JUDGE